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United States Court of Appeals

FOR THE EIGHTH CIRCUIT

Nos. 00-1773/00-2686EM

Missouri Republican Party, A Political Party Committee, etc., et al,

Appellees,

v.

Charles G. Lamb, In his official capacity as Executive Director of the Missouri Ethics Commission, et al,

Appellants.

Appeal from the United States District Court for the Eastern District of Missouri

Order Entered: July 31, 2000

Appellees, their successors, agents, and employees are enjoined from implementing, enforcing, or acting in reliance upon RSMo. §§ 130.032.4, 130.032.7 during the pendency of this appeal.

JOHN R. GIBSON, Circuit Judge, dissenting.

I respectfully dissent from the entry of the order enjoining Missouri from enforcing its limits on political party contributions pending appeal.

To determine whether an injunction pending appeal is warranted, we must consider (1) the likelihood of success on the merits of the appeal, (2) the likelihood of irreparable harm to appellants in the absence of the injunction, (3) the absence of substantial harm to other interested parties if the injunction is granted, and (4) the absence of harm to the public interest if the injunction is granted. See Shrink Mo. Gov't PAC v. Adams, 151 F.3d 763, 764 (8th Cir. 1998). Indeed, we have characterized these factors as "requirements." Id. The most important factor is likelihood of success on the merits. See id.

The court today in granting the injunction engages in none of the analysis required by our precedent. Lacking such analysis, the injunction is without support. In my view, appellants make an inadequate showing of likelihood of success on the merits so that when balanced with the other factors, an injunction pending appeal is not justified.

In upholding the limits on contributions that political parties may make to candidates, the district court carefully and faithfully applied the teachings of the Supreme Court in Nixon v. Shrink Missouri Government PAC, 120 S. Ct. 897 (2000), and Buckley v. Valeo, 424 U.S. 1 (1976). It found that there were no genuine disputes of material fact that would preclude summary judgment, and turned to the issue of whether the Missouri Republican Party's provision of funds were contributions or expenditures. The court stated there was no dispute that the party gave the funds to the candidates, and that the candidates, not the party, spent the money in spite of the control exercised by the party. Three of the candidates testified that "once my committee received the . . . contributions, I was free to spend the money as I saw fit." Based upon the facts before it, the district court concluded that the funds were contributions.

The court distinguished Colorado Republican Federal Campaign Committee v. FEC, 518 U.S. 604 (1996), which held unconstitutional limits on expenditures by political parties as applied to independent expenditures made by the Colorado committee. The district court expressed some agreement with Justice Thomas's separate opinion in Colorado Republican, which casts doubt on the anti-corruption rationale for contribution limits in the context of political party contributions, but rejected its reasoning in light of Nixon. Thus, Missouri's contribution limits were constitutional unless they were "so radical in effect as to render political association ineffective, drive the sound of a candidate's voice below the level of notice, and render contributions pointless." Nixon, 120 S. Ct. at 909. After examining the record, the district court concluded there was no evidence that the contribution limits on Missouri's political parties have prevented candidates from "amassing the resources necessary for effective advocacy." Buckley, 424 U.S. at 21.

It is my conclusion that the appellants have not demonstrated that they are likely to succeed on the merits, and accordingly have not shown a likelihood of irreparable harm in the absence of an injunction. Nor is there any showing with respect to the public interest.

When the case is fully briefed and arguments are made, I certainly will revisit the issue and carefully study whether the district court reached the correct conclusion. The legal issues in the case are complex as demonstrated by the numerous separate opinions in Buckley, Colorado Republican, and Nixon. I am of the view, however, that on the record before us, our requirements for granting an injunction pending appeal have not been met.

I would deny the motion.

Order Entered at the Direction of the Court:

Michael E. Gans

Clerk, U.S. Court of Appeals, Eighth Circuit